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EXAMINER

ROSEN, NICHOLAS D

ART UNIT PAPER NUMBER

3625

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/987,706	Applicant(s) BOYD ET AL.	
	Examiner Nicholas D. Rosen	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 June 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6.7</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-25 have been examined.

#### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it is 223 words long, substantially longer than 150 words, and not even in a single paragraph. Correction is required. See MPEP § 608.01(b).

The Brief Description of Drawings should more clearly correspond to the drawings, listing them. The Brief Description states, "FIG. 2-13 represent steps in the operation . . ." At a minimum, the figures should be listed, e.g., "Figures 2, 3, 4, 5, 6A, 6B, 7, 8, 9, 10, 11, 12, and 13 represent steps in the operation . . ."

The specification is further objected to due to inconsistencies in the use of part numbers and terms within the specification, and between the specification and the drawings. In the last four lines of page 8, and throughout page 9, reference is made to

the Customer Segmentation Module 300. In Figure 1A, this is Customer Segmentation Module 400. The last eight lines of page 9, and the first ten lines of page 10, refer to the Incentive *Typing* Module 400, where Figure 1A has Incentive *Translation* Module 300. Note also Figures 3 and 4. By contrast, on page 5, lines 5 and 6, the specification refers to an Incentive Translation Module ("ITM") 300 and a Customer Segmentation Module ("CUSM") 400. Corrections to the specification, and perhaps to the Drawings, are required.

### ***Claim Objections***

Claims 7-9 are objected to because of the following informalities: In the last line of claim 7, "changes is the driving factor" should apparently be "changes in the driving factor." Appropriate correction is required.

Claims 15-24 are objected to because of the following informalities: Claim 15 recites a scheme comprising modules, and it is not clear how a scheme, as such, can comprise modules. Presumably, claim 15 should recite a system comprising modules. Appropriate correction is required.

Claims 16-24 are objected to because of the following informalities: Each of claims 16-23 refers to "The system of claim 15," while claim 24 refers to "The system of claim 16" (read as "The system of claim 23" – see below). However, claim 15 does not actually provide antecedent basis for a system, referring instead to a scheme (see above). Appropriate correction is required.

Claim 19 is objected to because of the following informalities: "market channel performance model" should be "market channel performance module" to be compatible with the written specification and drawings (page 26, lines 10-28; Figure 1A).

Appropriate correction is required.

Claim 24 is objected to because of the following informalities: "said distributed network" lacks antecedent basis in claim 16. Therefore, claim 24 is presumed to be intended to depend on claim 23, and treated for examination purposes as so doing.

Appropriate correction is required.

Claim 25 is objected to because of the following informalities: In the third line of claim 25 (line 31 on page 44) "the product" lacks antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a method not within the technological arts ("technological arts" being considered equivalent to "useful arts," mentioned in Article I, Section 8 of the United States Constitution, saying that Congress shall have "power to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writing and Discoveries" – see *In re Musgrave*, 431 F.2d 882, 167 USPQ [CCPA 1970]). The

claims are directed to a method that does nothing more than manipulate an abstract idea. To be patentable, a method claim must produce a useful, concrete, and tangible result, or involve a step or act of manipulating technology (see *AT&T v. Excel Communications Inc.*, 172 F.3d at 1358, 50 USPQ 2d. at 1452). Evaluating a promotional scheme for a product may be, in a sense, useful, but is not concrete or tangible, and claims 1-14 nowhere recite a step of act of manipulating technology.

Claims 15-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a method not within the technological arts ("technological arts" being considered equivalent to "useful arts," mentioned in Article I, Section 8 of the United States Constitution, saying that Congress shall have "power to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writing and Discoveries" – see *In re Musgrave*, 431 F.2d 882, 167 USPQ [CCPA 1970]). The claims are directed to a method that does nothing more than manipulate an abstract idea. To be patentable, a method claim must produce a useful, concrete, and tangible result, or involve a step or act of manipulating technology (see *AT&T v. Excel Communications Inc.*, 172 F.3d at 1358, 50 USPQ 2d. at 1452). A promotion evaluation scheme may be, in a sense, useful, but is not concrete or tangible, and claims 15-22 nowhere recite a step of act of manipulating technology. Claims 23 and 24 recite that the system may be accessed over a distributed network (in claim 24, the Internet). However, that is held to be a trivial application of technology, insufficient to toll the statute.

Claim 22 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on the specification (page 26, lines 26-28), the market manager appears to be a human being, and human beings are not patentable. (If applicant intends to recite the market management application 40, this should be made clear.)

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites, "The method of claim 5, The method of claim 2," leaving it unclear whether claim 6 is intended to depend from claim 2 or claim 5. Based on its parallelism to claim 3, claim 6 is presumed for examination purposes to depend from claim 2, but correction is required to clarify this point.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites, "The method of the claim further comprising the steps," not specifying which claim claim 14 is intended to depend from. For examination purposes,

claim 14 is presumed to depend from claim 1, but correction is required to clarify this point.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Cunningham et al. (U.S. Patent 6,029,139). As per claim 1, Cunningham discloses a method for evaluating a promotion scheme for a product, the method comprising the steps of: creating a model of a market for the product (column 1, lines 19-27; column 6, lines 32-47); collecting historical transaction data related to the product in the market (column 4, line 62, through column 5, line 10; column 11, lines 42-54); analyzing the historical data and the model to determine a utility of the product without the promotion scheme (column 12, lines 26-35); and estimating the change in utility of the product from the promotion scheme (column 12, lines 44-51).

As per claim 2, Cunningham discloses that the utility of the product is determined through the sales volume of the product (column 12, lines 26-35 and 44-51).

As per claim 4, Cunningham discloses that the historical transaction data includes transactions of a competitive good (column 4, line 62, through column 5, line 10; column 11, lines 42-54; column 12, lines 36-40).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

### **Claims 3, and 5-14**

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) as applied to claim 2 above, and further in view of Garg (U.S. Patent 6,044,357). Cunningham does not expressly disclose that

the analyzing step uses a multiplicative model, but Garg teaches using a multiplicative model (column 2, lines 47-60; column 8, lines 10-49). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention for the analyzing step to use a multiplicative model, for the obvious advantage of mathematically including various factors which may affect sales of a product (note Garg, column 2, lines 13-16).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) as applied to claim 4 above, and further in view of official notice. Cunningham does not quite disclose that the utility of the product is determined through the market share of the product in comparison to the competitive good, but official notice is taken that it is well known for businesses to seek to increase their market shares. Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to determine the utility of the product through the market share of the product in comparison to the competitive good, for the obvious advantage of aiding users in increasing their market shares, thereby improving the prospects of their businesses.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) as applied to claim 2 above, and further in view of Naert and Weverbergh ("On the Prediction Power of Market Share Attraction Models"). Cunningham does not expressly disclose that the analyzing step uses an attraction model, but Naert and Weverbergh teach the use of market share attraction models (Abstract). Hence, it would have been obvious to one of ordinary skill in the art

of commerce at the time of applicant's invention for the analyzing step to use an attraction model, for the stated advantage that attraction models perform best.

Claims 7, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) as applied to claim 1 above. As per claim 7, Cunningham discloses identifying a driving factor in sales of the product (column 4, line 62, through column 5, line 10; column 11, lines 42-54; column 12, lines 16-43); and determining a future change to the driving factor caused by the promotion scheme (column 12, lines 44-51). Cunningham is not fully explicit that his system, during the analyzing step, correlates the sales trends of the product and historical changes in the driving factor, but by disclosing evaluating historical data about sales and promotional activity (column 4, line 67, through column 5, line 3), Cunningham implies performing the correlation. Cunningham discloses estimating a future change in sales of the product (column 12, lines 44-51), and given the inputs and the evaluation of historical data, this is strongly implied to be by associating the future change to the driving factor with similar historical changes in the driving factor. Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to do this, and likewise to correlate the sales trends of the product and historical changes in the driving factor, for the obvious advantage of enabling the invention of Cunningham to carry out its disclosed functions.

As per claim 8, Cunningham discloses that the driving factor is a price for the product (column 12, lines 16-18), and discloses taking into account promotional activity,

presumably including pricing, of competitors (column 12, lines 36-40), implying that relative price can be a driving factor.

As per claim 9, Cunningham does not expressly disclose that the driving factor is attractiveness of the product, but does, as noted above disclose price, and the price of a product is well known to contribute to its attractiveness.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) as applied to claim 1 above. Cunningham discloses defining a business goal, which may be maximizing sales volume for a given promotional budget (column 1, line 64, through column 2, line 2; column 5, lines 24-30), and discloses outputting expected volume, and thence sales and profitability based on a particular promotion scheme and other inputs (column 12, lines 44-51), which can constitute an estimated change in utility of the product, and is emphatically relevant to a business goal.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) as applied to claim 10 above, and further in view of Garg (U.S. Patent 6,044,357). Cunningham does not disclose that the business goal is elimination of a current inventory of the product, but Garg teaches minimizing inventory holding costs (column 4, lines 1-22). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention for the business goal to be elimination of a current inventory of the product, for the obvious advantage of minimizing holding costs.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) as applied to claim 1 above, and further in view of official notice. Cunningham does not expressly disclose updating the historical data to include data from new sales, and adjusting the estimated change in the utility of the product, but official notice is taken that it is well known to update historical data to include data from new sales, and adjust estimates based on new data. (And note that Cunningham strongly hints at the claimed limitations, column 4, lines 9-10.) Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to update the historical data to include data from new sales, and adjusting the estimated change in the utility of the product, for the obvious advantage of having the basis for one's estimates be as nearly as feasible current in a changing world.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) as applied to claim 1 above. Cunningham discloses forming a plurality of promotion schemes, estimating the change in utility of the product from each promotion scheme, and outputting a recommended promotion scheme (column 5, lines 31-48; see also column 12, lines 12-51), which implies comparing the different schemes.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) as applied to claim 1 above. Cunningham discloses forecasting future demand for the product without the promotion scheme (column 12, lines 26-40), and discloses estimating the change in utility of the product

from the promotion scheme (column 12, lines 44-51). Cunningham does not expressly disclose using the forecasted future demand without the promotion scheme in estimating the change from the promotion scheme, but the juxtaposition is highly suggestive, and Cunningham further discloses estimating the change in utility of the product from each of a plurality of promotion schemes to recommend the best (column 5, lines 31-48). This further suggests using the forecasted future demand, since one promotion scheme could be the control experiment of no new promotion scheme.

#### **Claims 15-24**

Claims 15, 17, 18, 21, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) in view of Garg (U.S. Patent 6,044,357) and Ouimet et al. (U.S. Patent 6,094,641). As per claim 15, Cunningham discloses a promotion evaluation scheme involving product segmentation, and a system comprising: a product segmentation module (column 4, line 62, through column 5, line 2; column 6, line 32, through column 7, line 20); an incentive translation module (column 5, lines 16-20); a data aggregation module (column 1, line 64, through column 2, line 7; column 6, lines 32-47; and an evaluation module (column 5, lines 31-48; column 12, lines 44-56). Cunningham does not disclose a customer segmentation module, but Garg teaches segmenting customers (Abstract; column 4, lines 48-59; column 7, lines 51-67). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to include a customer segmentation module, for the obvious advantage of directing promotions at those customers most likely to make additional purchases in consequence of receiving promotions.

Cunningham does not disclose a model selection module, but Ouimet teaches enabling a user to select a model (column 3, line 63, through column 4, line 5; column 4, lines 35-58). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to include a model selection module, for the obvious advantage enabling the user to select a model which he finds likely to be most accurate for his conditions, or otherwise preferable.

As per claim 17, Cunningham discloses a constraint generation module (Abstract; column 1, line 64, through column 2, line 2; column 2, lines 32-38).

As per claim 18, Cunningham discloses an optimization module (column 5, lines 31-66).

As per claim 21, Cunningham discloses a demand forecaster (column 5, lines 31-48; column 12, lines 44-51).

As per claim 22, if "market manager" is interpreted as a human being, then the user of Cunningham's system can be called a market manager (column 1, line 59, through column 2, line 2; column 2, lines 32-38; column 5, lines 11-20). If "market manager" is to be interpreted as a market management application (non-human), then the parts of the system of Cunningham which evaluate and recommend promotion plans (column 5, lines 31-48; column 12, lines 44-56) comprise a market management application.

As per claim 23, Cunningham discloses that the system may be accessed over a distributed network (column 1, line 64, through column 2, line 7).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham, Garg, and Ouimet as applied to claim 15 above, and further in view of Naert and Weverbergh ("On the Prediction Power of Market Share Attraction Models") and Brodie and de Kluyver ("Attraction Versus Linear and Multiplicative Market Share Models: An Empirical Evaluation"). Neither Cunningham nor Ouimet discloses that the model selection module selects between a multiplicative model and an attraction model, but multiplicative models and attraction models are both known (as taught by both the Naert and the Brodie abstracts). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to have the model selection module select between a multiplicative model and an attraction model, for the obvious advantage of letting a user apply whichever model he believed to be preferable (the Naert and Brodie abstracts appear to take different views on which is more accurate).

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham, Garg, and Ouimet as applied to claim 15 above, and further in view of official notice. Cunningham does not expressly disclose that the system comprises a market channel performance module, but official notice is taken that it is well known to compile and apply data on the performance of market channels. Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to include a market channel performance module, for the obvious advantage of assisting users in determining the performance of market channels, and deciding how to implement promotions most effectively.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham, Garg, and Ouimet as applied to claim 15 above, and further in view of Singh (U.S. Patent Application Publication 2002/0169657). Cunningham does not disclose an alert module, but Singh teaches this (paragraph 0028). Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant's invention to include an alert module, for the stated advantage of potential problems, and finding patterns otherwise undetected.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham, Garg, and Ouimet as applied to claim 23 above, and further in view of official notice. Cunningham does not expressly disclose that the distributed network is the Internet, but official notice is taken that it is well known to use the Internet to connect personal computers, servers, and other computers in a distributed network. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the distributed network to be the Internet, for the obvious advantage of connecting the personal computer, server, and data warehouse using a standard, widely available network, to which people can connect from all over the world.

#### **Claim 25**

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent 6,029,139) in view of Naert and Weverbergh ("On the Prediction Power of Market Share Attraction Models") and Brodie and de Kluyver ("Attraction Versus Linear and Multiplicative Market Share Models: An Empirical

Evaluation”), and official notice. Cunningham discloses a method for evaluating a promotion scheme for a product, the method comprising the steps of: creating a model of a market for the product (column 1, lines 19-27; column 6, lines 32-47); collecting historical transaction data related to the product in the market (column 4, line 62, through column 5, line 10; column 11, lines 42-54); analyzing the historical data and the model to determine a utility of the product without the promotion scheme (column 12, lines 26-35); and estimating the change in utility of the product from the promotion scheme (column 12, lines 44-51). Cunningham does not expressly disclose that the method step of estimating uses either a multiplicative or an attraction model, but the Naert and Brodie abstracts teach the use of multiplicative models and attraction models. Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant’s invention for the method of step of estimating to use either a multiplicative or an attraction model, for the stated advantages of accuracy in describing and predicting sales and market share.

Cunningham does not expressly disclose a program storage device readable by a machine, tangibly embodying a program of instructions executable by a machine to perform these method steps, but Cunningham discloses the use of computers (column 1, line 64, through column 2, line 7), and official notice is taken that it is well known for computers to be instructed to carry out procedures by such program storage devices. Hence, it would have been obvious to one of ordinary skill in the art of commerce at the time of applicant’s invention to use such a program storage device, for the obvious advantage of instructing the computer(s) to carry out the desired procedures.

### ***Statement Regarding IDS***

The Information Disclosure Statement which is listed as Paper #7 in the instant application seems to be included by error; not only is the cited art irrelevant, but the actual list of documents appears to pertain to an entirely different case, with a different application number and attorney docket number (while the cover letter refers to the instant application). Examiner is not certain who made a mistake, where, but wishes to call Applicant's attention to the discrepancy. It may be that the IDS listed as Paper #7 should be included with another application, and it may be that additional documents were intended to be filed in another IDS associated with the instant application.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Huang et al. (U.S. Patent 5,953,707) disclose a decision support system for the management of an agile supply chain. Ouimet et al. (U.S. Patent 6,078,893) disclose a method for stabilized tuning of demand models. Cannon (U.S. Patent 6,286,005) discloses a method and apparatus for analyzing data and advertising optimization. Abulleil et al. (U.S. Patent Application Publication 2001/0027455) disclose a strategic planning system and method. Willman et al. (U.S. Patent Application Publication 2003/0195806) disclose a manufacturer's coupon ordering system. Mannik et al. (U.S. Patent Application Publication 2004/0122731) disclose a system and method for using interactive electronic representations of objects.

Blattberg et al. ("Modelling the Effectiveness and Profitability of Trade Promotions") disclose a model that aids management in measuring the effects of trade promotions. Simester ("Optimal Promotion Strategies") discloses a model of retail promotions. The anonymous article from Siemens Nixdorf discloses analyzing business transactions to enable retailers to design marketing and promotional campaigns.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 703-305-0753. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins, can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Non-official/draft communications can be faxed to the examiner at 703-746-5574.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Nicholas D. Rosen*

**NICHOLAS D. ROSEN**  
**PRIMARY EXAMINER**

January 12, 2005